

Board of Forestry and Fire Protection

INITIAL STATEMENT OF REASONS

“RPF AND CERTIFIED SPECIALTY FEE AMENDMENTS, 2019”

**Title 14 of the California Code of Regulations (14 CCR),
Division 1.5, Chapter 10:
Article 2
Amend: § 1605**

INTRODUCTION INCLUDING PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATION IS INTENDED TO ADDRESS (pursuant to GC § 11346.2(b)(1))...NECESSITY (pursuant to GC § 11346.2(b)(1) and 11349(a))....BENEFITS (pursuant to GC § 11346.2(b)(1))

The Professional Foresters Law (Public Resources Code (PRC) § 750, *et seq.*), declares the existence of a public interest in the management and treatment of the forest resources and timberlands of this state and to provide for the regulation of persons who practice the profession of forestry and whose activities have an impact upon the ecology of forested landscapes and the quality of the forest environment, and through that regulation to enhance the control of air and water pollution, the preservation of scenic beauty, the protection of watersheds by flood and soil erosion control, the production and increased yield of natural resources, including timber, forage, wildlife, and water, and outdoor recreation, to meet the needs of the people.

Pursuant to PRC § 759, the Board is authorized to adopt rules and regulations to affect the provisions of the article (the Professional Foresters Law), including the regulation of persons who practice the profession of forestry and whose activities have an impact upon the ecology of forested landscapes and the quality of the forest environment (PRC § 751).

Additionally, within the Professional Foresters Law, PRC § 782 requires the Board to “...establish by regulation the amount of fees within the following ranges, and based on a determination by the board of the amount of revenues reasonably necessary to carry out the article.” The section then outlines maximum fees for certain specified applications, registrations, and other actions.

The proposed action was developed in response to budgetary investigations by the Office of Foresters Registration with the assistance from Cal Fire. After several years of review by the Professional Foresters Examination Committee (PFEC), it has been determined that fund 0300, also known as the RPF Fund, will have insufficient funds to conduct the normal processes and functions for the examination and licensing of Professional Foresters and the Certified Specialty program by fiscal 2019-20. Much of this problem stems from a reduced number of registrants and a fee structure that has

not changed for 28 years since last revised in 1991.

PFEC recommendations include cost cutting measures such as reducing the number of locations for examinations, utilizing State facilities on weekends where there is no facility cost for conducting exams, and having the Executive Officer proctor the exam to eliminate expenditures. These actions will take full effect in 2019. Additionally, the PFEC requested a 10 year forecast of projected fund expenditures with the following assumptions; operation expenses (OE) increased by a nominal rate of inflation (2.6%) annually, personnel expenses (PE) increased by expected pay increases for merit and position salary step, and an assumption that 10% of the registry would option to either retire their license or put their license in withdrawal status as a result of the projected biennial fee increase for registration renewal. The projection was conducted to provide an analysis of varying combinations of biennial fee levels, potential cost reduction actions and the resulting annual revenue growth or reduction throughout the 10-year projection period.

Data was utilized from Cal Fire accounting reports and projections from Thomas Lutzenberger, Assistant Deputy Director, Management Services. Utilizing the PFEC projection assumptions and the historic and forecasted accounting and revenue projections from Cal Fire, it was determined that a minimum biennial fee to maintain fund integrity and build fund surplus for long term solvency will require an 84% increase in the current renewal fee schedule. This is similar to the 72% fee increase which occurred 27 years ago in 1991, the last time this fee was increased. The PFEC in deliberation also requested a similar fee increase for Certified Specialties.

The **purpose** of the proposed action is to raise revenue to ensure the continued functions of the Office of Foresters Registration including; the review of applicants for examination, examination development and implementation, proctoring, and grading. Other functions supported by the RPF fund include complaint review, investigations, complaint processing, litigation, record keeping, renewal processing, and distribution of licensing information to the registry, and general administration of the Professional Foresters Law.

The **effect** of the proposed action is to increase the renewal fee associated with licensing of Registered Professional Foresters and associated Certified Specialists.

The **benefit** of the proposed action is to increase revenue to maintain fund solvency so the processes and benefits of licensing for Registered Professional Foresters and Certified Specialists are maintained and the continual support and administration of the Professional Foresters Law is achieved, preserving the associated environmental benefits of the Law.

SPECIFIC PURPOSE OF EACH ADOPTION, AMENDMENT OR REPEAL (pursuant to GOV § 11346.2(b)(1)) AND THE RATIONALE FOR THE AGENCY'S DETERMINATION THAT EACH ADOPTION, AMENDMENT OR REPEAL IS REASONABLY NECESSARY TO CARRY OUT THE PURPOSE(S) OF THE

STATUTE(S) OR OTHER PROVISIONS OF LAW THAT THE ACTION IS IMPLEMENTING, INTERPRETING OR MAKING SPECIFIC AND TO ADDRESS THE PROBLEM FOR WHICH IT IS PROPOSED (pursuant to GOV §§ 11346.2(b)(1) and 11349(a) and 1 CCR § 10(b)). *Note: For each adoption, amendment, or repeal provide the problem, purpose and necessity.*

The Board is proposing action to amend 14 CCR §§ 1605.

The **problem** is that the last time the renewal fee for Registered Professional Foresters was increased was in 1991. Since that time the number of foresters in the registry paying the renewal fee has gradually declined by approximately 1/3 thereby jeopardizing the fund solvency.

The **purpose** of the proposed action is to provide sufficient funds to maintain the functions of the Office of Foresters Registration for at least a decade into the future without another adjustment to the fund renewal fee amount.

The **effect** of the proposed action is the following:

- An 84% increase in both the annual rate for license as a professional forester from \$95 to \$175, and the renewal fee from \$ 190.00 biennially to \$ 350.00 biennially.
- An approximately 85.7% increase in both the annual rate for a specialty certificate from \$35 to \$65, and the renewal fee for Certified Registrants from \$ 70 biennially to \$ 130.00 biennially.

Aggregated Explanation

The proposed amendments section 1605 (b)(2)(4)(6) & (7) do the following:

- Increase the annual and biennial rate for a license as a professional forester.
- Increase the annual and biennial renewal rate for a specialty certificate.

Amend 14 CCR § 1605 Fees

Amended 1605 (b)(2) and 1605 (b)(4) to increase the annual rate for a license as a professional forester and Specialty Certificate to \$ 175 and \$ 65 respectively. Amended 1605 (b)(6) and 1605 (b)(7) to increase the biennial renewal rate as a professional forester or specialty certificate to \$ 350 and \$ 130 respectively. These amendments are necessary to maintain the functions of the PFEC and to clarify the fee structure to the regulated public.

ECONOMIC IMPACT ANALYSIS (pursuant to GOV § 11346.3(b)(1)(A)-(D) and provided pursuant to 11346.3(a)(3))

The **effect** of the proposed action is the following:

- Increase the annual rate and renewal rate for a license as a professional forester and a specialty certificate.

The proposed action:

- (A) will not create jobs within California;
- (A) will not eliminate jobs within California;

- (B) will not create new businesses,
- (B) will not eliminate existing businesses within California
- (C) will not affect the expansion or contraction of businesses currently doing business within California.
- (D) will not yield nonmonetary benefits.

Based on the following parameters, the **upper bound** of the costs of the proposed action were quantified:

- The total number of licensed professional foresters in California is 1,135.
- The total number of specialty certificates in California is 88.

Therefore, the total cost for the action is:

Proposed RPF renewal increase	1,135x \$350	= \$ 397,250
Former RPF renewal rate	1,135 x \$190	= <u>\$ 215,650</u>
		\$ 181,600 Net Cost

Proposed specialty certificate renewal increase	88 x \$140	= \$ 12,320
Former specialty certificate renewal rate	88 x \$70	= <u>\$ 6,160</u>
		\$ 6,160 Net Cost

Thus, the adverse economic impact is \$ 187,760 dollars biennially or **\$ 93,880 annually.**

Businesses and Individuals will be subject to this cost. However, business are not expected to expand or contract as a result of these amendments. Although, the proposed action does increase costs to RPFs and businesses that pay the renewal fee for their employees, depending on the variables described above, it is not expected that the proposed action will be so economically expensive it will result in contraction of businesses or so time consuming that it will result in an expansion of businesses.

The number of businesses impacted, including small business, is unknown. Small businesses means independently owned and operated, not dominant in their field of operations and having annual gross receipts less than \$1,000,000. No businesses are expected to be created or eliminated.

The geographic extent is Statewide.

The proposed action will adversely affect the ability of California business to compete with other States by making it costlier to produce goods and services in California and it will make managing forestland more expensive in California as compared to other States, so it follows that it may decrease investment in the State.

There are no reporting requirements associated with the proposed action.

The proposed action does not afford the incentive for innovation in products, materials or processes.

The proposed action will have a neutral effect on health, welfare, and worker safety, but will benefit the State's environment through the continued functions of the Office of Foresters Registration. **STATEMENTS OF THE RESULTS OF THE ECONOMIC IMPACT ASSESSMENT (EIA)**

The results of the economic impact assessment are provided below pursuant to **GOV § 11346.5(a)(10)** and prepared pursuant to **GOV § 11346.3(b)(1)(A)-(D)**. The proposed action:

- (A) will not create jobs within California;
- (A) will not eliminate jobs within California;
- (B) will not create new businesses,
- (B) will not eliminate existing businesses within California
- (C) will not affect the expansion or contraction of businesses currently doing business within California.
- (D) will yield nonmonetary benefits. For additional information on the benefits of the proposed regulation, please see anticipated benefits found under the "Introduction Including Public Problem, Administrative Requirement, or Other Condition or Circumstance the Regulation is Intended to Address".

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORT, OR SIMILAR DOCUMENT RELIED UPON (pursuant to GOV SECTION 11346.2(b)(3))

The Board of Forestry and Fire Protection relied on the following list of technical, theoretical, and/or empirical studies, reports or similar documents to develop the proposed action:

1. State of California Public Resources Code (PRC) §§ 750-783
2. State of California Code of Regulations Title 14 (14 CCR) §§ 1600-1651

REASONABLE ALTERNATIVES TO THE PROPOSED ACTION CONSIDERED BY THE BOARD, IF ANY, INCLUDING THE FOLLOWING AND THE BOARD'S REASONS FOR REJECTING THOSE ALTERNATIVES (pursuant to GOV § 11346.2(b)(4)(A) and (B)):

- **ALTERNATIVES THAT WOULD LESSEN ANY ADVERSE IMPACTS ON SMALL BUSINESS AND/OR**
- **ALTERNATIVES THAT ARE LESS BURDENSOME AND EQUALLY EFFECTIVE IN ACHIEVING THE PURPOSES OF THE REGULATION IN A MANNER THAT ENSURES FULL COMPLIANCE WITH THE AUTHORIZING STATUTE OR OTHER LAW BEING IMPLEMENTED OR MADE SPECIFIC BY THE PROPOSED REGULATION**

Pursuant to **GOV § 11346.5(a)(13)**, the Board must determine that no reasonable alternative it considers, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private

persons and equally effective in implementing the statutory policy or other provision of law.

Alternative 1: No Action Alternative

The Board considered taking no action, but the no action alternative was rejected because it would not address the problem.

Alternative #2: Make Existing Regulation Less Prescriptive

This action could include greatly simplifying the fee structure to one standard amount for all Registered Professional Foresters, Specialty Certificants and any other proposed future limited license class. This alternative was rejected as it would create further complications since the savings of a widely distributed uniform fee would be outweighed by the anticipated license withdrawal and voluntary relinquishment of both retired RPFs and both retired and active Specialty Certificants.

Alternative #3: Proposed Action

the proposed action is to raise revenue to ensure the continued functions of the Office of Foresters Registration including; the review of applicants for examination, examination development and implementation, proctoring, and grading. Other functions supported by the RPF fund include complaint review, investigations, complaint processing, litigation, record keeping, renewal processing, distribution of licensing information to the registry, and general administration of the Professional Foresters Law.

Alternatives 1 and 2 would not be more effective or equally effective while being less burdensome or impact fewer small businesses than the proposed action. Specifically, alternatives 1 and 2 would not be less burdensome and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the authorizing statute or other law being implemented or made specific by the proposed regulation than the proposed action.

Additionally, alternatives 1 and 2 would not be more effective in carrying out the purpose for which the action is proposed and would not be as effective and less burdensome to affected private persons than the proposed action or would not be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action. Further, none of the alternatives would have any adverse impact on small business. Small business means independently owned and operated, not dominant in their field of operations and having annual gross receipts less than \$1,000,000.

There are no other viable alternatives. Without regulatory changes, the RPF fund will likely be depleted in two to four years requiring state subsidy to perform the functions of examination, licensing and discipline of RPFs and CRMs.

Prescriptive Standards versus Performance Based Standards (pursuant to GOV §§11340.1(a), 11346.2(b)(1) and 11346.2(b)(4)(A)):

Pursuant to **GOV §11340.1(a)**, agencies shall actively seek to reduce the unnecessary regulatory burden on private individuals and entities by substituting performance standards for prescriptive standards wherever performance standards can be reasonably expected to be as effective and less burdensome, and that this substitution shall be considered during the course of the agency rulemaking process.

The proposed action is prescriptive as necessary to address the problem. Performance based changes are not considered viable alternatives as the costs and revenues associated with running the licensing program have not significantly changed since 1991. The greatest impact to the program has been the downward trajectory of revenue due to a declining registry which can only be redressed by a prescriptive fee increase.

Pursuant to **GOV § 11346.2(b)(1)**, the proposed action does not mandate the use of specific technologies or equipment.

Pursuant to **GOV § 11346.2(b)(4)(A)**, the abovementioned alternatives were considered and ultimately rejected by the Board in favor of the proposed action. The proposed action does not mandate the use of specific technologies or equipment, but does prescribe specific actions.

FACTS, EVIDENCE, DOCUMENTS, TESTIMONY, OR OTHER EVIDENCE RELIED UPON TO SUPPORT INITIAL DETERMINATION IN THE NOTICE THAT THE PROPOSED ACTION WILL NOT HAVE A SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS (pursuant to GOV § 11346.2(b)(5))

The fiscal and economic impact analysis for these amendments relies upon contemplation, by the Board, of the economic impact of the provisions of the proposed action through the lens of the decades of experience practicing forestry in California that the Board brings to bear on regulatory development. Data was also utilized from FIRE accounting reports and projections.

The proposed action will have a statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states but it is not considered to be significant.

DESCRIPTION OF EFFORTS TO AVOID UNNECESSARY DUPLICATION OR CONFLICT WITH THE CODE OF FEDERAL REGULATION (pursuant to GOV § 11346.2(b)(6))

The Code of Federal Regulations has been reviewed and based on this review, the Board found that the proposed action neither conflicts with, nor duplicates Federal regulations. There are no comparable Federal regulations for timber harvesting on State or private lands.